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In The
Supreme Court of the United States

JAMES OBERGEFELL, et al.,
Petitioners,
v.
RICHARD HODGES, Director,
Ohio Department of Health, et al.,
Respondents.

APRIL DEBOER, et al.,
Petitioners,
v.
RICK SNYDER, Governor of Michigan, et al.,
Respondents.

GREGORY BOURKE, et al.,
Petitioners,
v.
STEVE BESHEAR, Governor of Kentucky, et al.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICI CURIAE* COLAGE; EQUALITY FEDERATION; FAMILY EQUALITY COUNCIL; FREEDOM TO MARRY; AND PFLAG IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae ("*Amici*") are organizations dedicated to securing our nation's promise of liberty, equality, and the pursuit of happiness for all American families. Some *amici* focus on working with the children of lesbian, gay, bisexual, and transgender ("LGBT") parents and with LGBT youth. *Amici*'s constituents are typical American families, with the same joys, challenges, and responsibilities as other families. Yet these families also must overcome official governmental opprobrium in the form of laws that tangibly harm them and that stigmatize and de-legitimize their family relationships socially, psychologically, and legally.

COLAGE is the only national organization for and by people who have an LGBT parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats these families differently can be isolating and

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[1] Pursuant to Rules 37.3 and 37.6 of the Rules of the Supreme Court, all parties included in the caption of this brief have consented to the filing of this *amicus curiae* brief. Consent has not been received in *Tanco v. Haslam* (Case No. 14562) and therefore this brief is not submitted in that case. Counsel of record for all parties received notice at least 10 days prior to the due date of *Amici*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *Amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

challenging for children. Founded in 1990, COLAGE has online networks, local chapters, published resources, and direct programming and provides youth empowerment and leadership training on the myriad issues important to LGBT families. Based on its 25-year experience working directly with thousands of people nationwide with LGBT parents, COLAGE can attest to the critical importance for children of having their parents' relationships recognized and respected on every social, institutional, political, and legal level.

Since 1997, Equality Federation has partnered with state-based organizations that work to improve the lives of LGBT people in their own communities. Equality Federation provides resources, trainings, and collaborative opportunities to maximize the efficacy of such organizations. Equality Federation supports partner organizations on a wide spectrum of issues and concerns, including securing the freedom to marry, ensuring that all LGBT people are protected from discrimination in employment, housing, and public accommodations, and building leaders who can propel their organizations forward.

Family Equality Council is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing LGBT parents and their children. Family Equality Council works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers young adults with LGBT parents to speak out about

their families, share their own stories, and become advocates for family equality.

Freedom to Marry is the campaign to win marriage nationwide. Freedom to Marry has worked with partner organizations to drive its national strategy to fulfillment throughout the country, building a critical mass of states and support to set the stage for ending marriage discrimination once and for all. Freedom to Marry is based in New York and has participated as *amicus curiae* in several marriage cases in the United States and abroad.

PFLAG is a national nonprofit organization that promotes the health, well-being, and civil rights of LGBT persons, as well as their families and friends. PFLAG has more than 200,000 members and supporters, with 385 affiliates. PFLAG provides support services to LGBT individuals, their families, and friends to assist in coping with discrimination and hostility and is engaged in education and advocacy efforts to create a society where all citizens enjoy full civil and legal equality. PFLAG's members are parents, children, grandparents, siblings, and friends of LGBT individuals who believe that their family members should have the same right to marry as different-sex couples and have first-hand knowledge of how marriage discrimination harms not only same-sex couples themselves, but also their family members. PFLAG has participated as *amicus curiae* in several marriage equality cases.

INTRODUCTION AND SUMMARY OF ARGUMENT

Every day that same-sex couples are denied the freedom to marry, they and their families suffer new and continuing injuries to their financial security, their access to legal protections, and their fundamental dignity. *Amici* urged this Court in September 2014 to grant review in then-pending marriage equality cases so that this harm could be promptly halted. The Court's denial of those petitions had the effect of permitting same-sex couples to begin marrying in several additional states – thereby reducing harm to those families and strengthening the emerging national consensus in favor of eliminating discrimination in civil marriage.

In contrast, denying the petitions now before the Court would *deepen* the harm, entrenching discrimination inflicted daily upon thousands of American families in five states, and perpetuating confusion and unfairness regarding recognition of marriages validly entered into and respected in most of the country. The decisions of the Sixth Circuit and Louisiana District Court challenged in the pending petitions conflict with the growing recognition – expressed not just in opinion polls but in a remarkable, otherwise virtually unbroken string of judicial decisions – that injuring American families is unnecessary, unjust, and inconsistent with basic American values of fairness and equality. Every day of denial causes real harm; it matters whether the discrimination ends in a year, two years, or ten. Prompt review

and reversal by this Court of one or both of the decisions before it is warranted to halt this harm once and for all.

The injuries caused by marriage discrimination are great and small, tangible and dignitary, ongoing and recurring. Every day, same-sex partners arrive, frantic, at emergency rooms, forced to explain their legal right to see their partners based on legal statuses such as civil union, affording no substitute for the clarity and dignity of marriage itself, while couples living in too many states lack even that partial respect. By contrast, married people say "that's my spouse" and are admitted immediately. Every day, parents barred from marrying die with no legal relationship to children adopted or conceived by their partners, depriving those children of Social Security benefits that would be automatic if their parents had been able to marry. Every day, children are humiliated by the knowledge that society views their parents' relationships as less worthy of respect and protection than those of their friends' different-sex parents. Every day of denial takes its toll on too many families across the country.

This Court observed last year that the decision of states to respect the right of same-sex couples to marry "enhanced the recognition, dignity, and protection of the class in their own community." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). The Court held that Congress's denial of federal recognition to those marriages inflicted needless tangible harm through loss of federal benefits and protections,

as well as grievous dignitary harm by creating a class of "second-tier marriage[s]" that "humiliates tens of thousands of children now being raised by same-sex couples." *Id.* at 2694.

Over the last eighteen months, forty-six federal and state court decisions from forty-two cases across twenty-four states have applied *Windsor*'s reasoning to strike down marriage and marriage recognition bans in individual states.[2] This "flood of cases" has embraced the "increasingly obvious" conclusion that exclusion from civil marriage "serves only to hurt, to discriminate, to deprive same-sex couples and their families of equal dignity, to label and treat them as second-class citizens, and to deem them unworthy of participation in one of the fundamental institutions of our society." *Pareto v. Ruvin*, Case No. 14-1661 CA 24, slip op. at 34 (Fla. Cir. Ct. July 24, 2014).

Only four rulings issued since *Windsor* – including the decisions below – have held otherwise.[3] But these outliers underscore that, absent a definitive ruling by this Court, marriage bans persisting in many states will continue to inflict harm daily on millions of Americans – same-sex couples, their

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[2] *See, e.g.*, *Post-Windsor Cases Ruling in Favor of Marriage Equality Claims*, Lambda Legal (Nov. 3, 2014), *available at* http://www.lambdalegal.org/pending-marriage-equality-cases.

[3] *Marriage Rulings in the Courts*, Freedom to Marry (updated Nov. 26, 2014), *available at* http://www.freedomtomarry.org/pages/marriage-rulings-in-the-courts.

children, and their extended families. This harm falls into three broad categories.

First, as demonstrated below, exclusion from civil marriage inflicts a wide array of tangible injuries, ranging from denial of access to spousal health insurance coverage to loss of crucial state and federal public benefits to interference with access during medical emergencies and with burial and funeral decisions. These injuries have direct and grievous impact on the children of LGBT parents – including, among other things, the risk that a child may end up with no legal guardian where an adoptive or biological parent dies and the state views the surviving parent as a legal stranger to the child.

Second, these tangible injuries are exacerbated by severe dignitary injury – the impact of being treated as second-class citizens whose relationships are deemed unworthy of equal status, rights, and protections under the law. Such injuries can actually be quite "tangible" in and of themselves, particularly the severe psychological harm to children of being told by society that their families are less worthy of recognition and respect than those of heterosexual parents.

Finally, even couples who *are* able to marry in their home states – or who travel to another state to marry – are exposed to significant harm as a result of the confusing patchwork of laws either affirming or denying the freedom to marry from state to state. Couples traveling to another state may suddenly find

themselves treated as "unmarried" under state law and face complications involving such matters as divorce, child custody, estate administration, and access to state and federal benefits.

Marriage is not a single event. It is the framework for and the backbone of a lifetime shared. Many same-sex couples have been together for decades, while others are just beginning their lives together. Like all couples, same-sex couples assume myriad responsibilities to each other, to their children, and to extended families – and in their daily lives experience immeasurable joys, daunting challenges, triumphs and tragedies large and small. Those excluded from civil marriage face these stresses with one hand tied behind their back – forced to negotiate social, economic, medical, and regulatory frameworks that neither protect nor honor them.

This is not an abstract problem. Every single day, denial of the right to marry and refusal to respect lawful marriages result in concrete injury to LGBT families and their children. The decisions below add insult to injury by largely ignoring the harms these bans continually inflict. This harm cannot be undone; it can only be stopped, and only this Court can stop it nationwide. We respectfully request that the Court grant *certiorari* to affirm the freedom to marry and the guarantee of equal protection and to end the harm caused by marriage discrimination.

ARGUMENT

I. The Continuing Denial of the Freedom to Marry Imposes Severe Legal Burdens and Detriments on Millions of Americans Every Day for No Good Reason

Review of the decisions below is necessary to end systemic discrimination that every day imposes significant legal burdens and detriments on millions of Americans. It is now widely understood that marriage discrimination causes direct, tangible harm by excluding same-sex couples from hundreds of protections and responsibilities triggered by marriage in the areas of parenting, inheritance, taxes, access to government benefits, and duties of support, among many others. This harm extends to the private sector, where many decision-makers rely on marital status to determine, for example, whether employees qualify for benefits. As court after court has held – but the decisions below ignore – there is no reason to perpetuate and prolong these injuries.

In *Windsor*, this Court found that the Defense of Marriage Act ("DOMA"), by barring federal recognition for same-sex couples' lawful marriages, unconstitutionally inflicted a wide range of tangible financial and legal harms on these couples and their families. "Under DOMA, same-sex married couples have their lives burdened, by reason of government decree, in visible and public ways" because the statute "touches many aspects of married and family life, from the mundane to the profound." 133 S. Ct. at 2694. Among other things, the Court observed that "[DOMA]

prevents same-sex married couples from obtaining government healthcare benefits they would otherwise receive. It deprives them of the Bankruptcy Code's special protections for domestic-support obligations. It forces them to follow a complicated procedure to file their state and federal taxes jointly." *Id.* (citations omitted). The Court further noted that DOMA "brings financial harm to children of same-sex couples" because "[i]t raises the cost of health care for families by taxing health benefits provided by employers to their workers' same-sex spouses" and "denies or reduces [Social Security] benefits allowed to families upon the loss of a spouse and parent, benefits that are an integral part of family security." *Id.* at 2695.

In the wake of *Windsor*, the overwhelming weight of federal authority – defied by the decisions below – holds that state laws excluding same-sex couples from civil marriage are similarly unconstitutional.[4] For example, while noting that *Windsor* decided only the constitutionality of DOMA, the Tenth Circuit observed that the tangible harms suffered by LGBT residents of Utah and their children under its marriage ban – including higher health care costs and loss of Social Security benefits upon the loss of a spouse and parent – are strikingly similar to those identified in *Windsor*. *See Kitchen v. Herbert,* 755 F.3d 1193, 1207, 1215 (10th Cir.), *cert. denied*, 135 S. Ct. 265 (2014).

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[4] *See Marriage Rulings in the Courts*, *supra* note 3.

But the litany of harms flowing from federal non-recognition is actually more than *doubled* in states where same-sex couples are excluded from marriage entirely – and thus denied all *state* as well as *federal* benefits and protections. Thus, for example, Florida's marriage ban excludes same-sex couples from (among many other things) duties of financial support (enforced by criminal penalties); presumptions of parentage for children born during marriages; the automatic right to make medical decisions for an incapacitated spouse; the right to spousal insurance coverage and benefits (where otherwise available); the right to court-ordered equitable distribution of property on marriage dissolution; various rights of inheritance and election upon the death of a spouse; and a host of *federal* benefits available to married couples only when the state of residence recognizes the couple's marriage, including those related to Social Security and veterans' benefits. *Pareto*, slip op. at 24-25.

These exclusions harm same-sex couples and their children *every day*. In case after case, citizens of states denying equal marriage rights have volunteered accounts of the often irreparable hardships they regularly suffer as a result of their home state's discriminatory marriage ban and refusal to recognize the valid out-of-state marriages of same-sex couples. Some illustrative accounts are summarized below.

Shana Carignan and Megan Parker • Greensboro, North Carolina

Shana and Megan, barred from marriage in their home state of North Carolina, legally married in Massachusetts and returned home. *See* Carignan Aff., ¶¶ 3, 7, *Fisher-Borne v. Smith*, Civil Action No. 12-cv-00589 (M.D.N.C. Apr. 8, 2014), Docket No. 78. Their six-year-old son, J.C., suffers from cerebral palsy and is therefore unable to walk and has only "limited ability to control his limbs or communicate verbally." *Id.* ¶ 3. Because of his condition, J.C. often faces serious medical emergencies. *Id.* J.C. was covered only by Medicaid, for which he was eligible because Megan adopted him through foster care. *Id.* ¶ 13. Shana had a health insurance plan that would provide J.C. with better care that he critically needs during these important developmental years, and J.C. could receive premium assistance from a state program to help pay for it, but North Carolina's marriage recognition ban barred Shana from being treated as J.C.'s parent. *Id.* ¶¶ 13, 17. Once that ban was lifted in October 2014, Shana and Megan became the first same-sex couple in North Carolina to file for second-parent adoption, a step towards eliminating the harm inflicted by marriage discrimination.[5]

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[5] *See* Stephanie Ando, *First same-sex couple files for adoption in Guildford County*, Fox8, *available at* http://myfox8.com/2014/10/13/first-same-sex-couple-files-for-adoption-in-guilford-county.

But many other families who live in states that continue to deny the freedom to marry suffer similar harms on a daily basis.

Michelle Gibson and Deborah Meem • Cincinnati, Ohio

Michelle and Deb, university professors, have been together for almost twenty years, but they do not have the freedom to marry in Ohio. They are unable to travel to another state in order to marry because Michelle has multiple sclerosis and uses a wheelchair, making travel more difficult. Michelle's disability prevents her from working and, with Deb nearing retirement, the couple is worried about making sure that they can take care of each other when neither of them is working – including by having a say in medical care and being eligible for spousal Social Security benefits. "We need to know that in those life changes, we can have access to the rights and privileges of any married couple," Michelle said. "We would have difficulty doing that because we're not legally married."[6]

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[6] *Why We're Fighting for Marriage in OH*, Freedom to Marry, *available at* http://www.freedomtomarry.org/story/entry/why-were-fighting-for-marriage-in-oh.

Steven Rains and Don Condit • Fort Worth, Texas

Steven and Don, who were together for 31 years, were married in 2008 in California, but when they returned home to Texas their marriage was not respected. Last November, Don unexpectedly passed away due to complications of an Agent Orange-related cancer – a result of his Army service in the Vietnam War. Steven was omitted from Don's death certificate, was barred from making decisions about his cremation, and is unable to access various financial benefits – including Don's Veterans Affairs benefits and retirement pension from his years working with a railroad company – that he would have received if their marriage was respected in Texas. Steven left his job several years ago to care for his ailing husband, and at 60 he is now unable to find a job and has been forced to dip into savings to live. "The freedom to marry won't bring Don back," Steven said. "But it would make it easier for me. I'm just stuck in limbo. And that makes it just so much harder to move on with your life."[7]

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[7] *"Found by Companion": How Texas' Marriage Ban is Ignoring 31 Years of Commitment*, Texas for Marriage, *available at* http://texasformarriage.org/voices/families/found-by-companion-how-texas-marriage-ban-is-ignoring-31-years-of-commitment/.

Jamie Cunningham & Courtney Seals • Knoxville, Tennessee

Jamie and Courtney met in 2011 and, after getting engaged, began the process of having a baby. Jamie got pregnant in February 2013, but just before the baby was born, Courtney was laid off from her job. They struggled to make ends meet for the next few months, but when they recovered they were faced with the harsh reality that their new baby daughter was legally connected only to Jamie. Although the couple has devoted their life to raising their child, if something were to happen to Jamie, Courtney would have no legal control over their daughter's future care. The women cannot afford an expensive and lengthy adoption process, which likely would not be necessary if they could marry in Tennessee.[8]

Tim Love and Larry Ysunza • Louisville, Kentucky

Tim and Larry have been together for 35 years and joined together in civil union in Vermont in 2000, but they now live in Kentucky, where their relationship is accorded no legal respect. Last year, Tim was diagnosed with heart issues and had to have surgery. Tim and Larry were able to create documentation authorizing Larry to make medical decisions for Tim,

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[8] *Preparing for Our Family's Future in TN*, Freedom to Marry, *available at* http://www.freedomtomarry.org/story/entry/preparing-for-our-familys-futures-in-tennessee.

but they completed the necessary documents only minutes before the surgery – a process they never would have had to go through if they had been able to marry in Kentucky. "Other married couples don't even have to think twice about that issue – they know that their husband or wife can make those decisions for them," Tim said.[9]

Summer and Sarah Davies • Lexington, Kentucky

Summer and Sarah have been together for more than four years, and they are raising two children, one of them a newborn, in Lexington. They married in Washington, D.C. in 2011. Because their marriage is not respected in Kentucky, Summer is also not legally treated as a parent to their first daughter, Kate. "I was the first person to hold our daughter, but I cannot be listed on her birth certificate," she said. To establish any legal tie to her daughter, Summer – at great personal financial expense – had to file a "friendly lawsuit" against her wife (Kate's biological parent) for joint custody. Even now, Summer is respected only as a "joint custodian" – and the couple had to endure the same process, with all the same

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[9] *Until 'Love' Wins in Kentucky*, Freedom to Marry, *available at* http://www.freedomtomarry.org/story/entry/until-love-wins.

financial burdens, upon the birth of their second child.[10]

Nancy and Jennie Rosenbrahn • Rapid City, South Dakota

Nancy and Jennie legally married last year at 68 and 72 in Minnesota before returning to South Dakota, where their marriage is not respected. The two women, who are grandparents, have been together for 27 years and own their home and a business together. However, because of South Dakota's anti-marriage laws, Nancy and Jennie are unable to share in Social Security protections afforded by the federal government, which is governed by a "place of domicile" rule. Each can collect only her own benefits, with no survivorship benefits such as would be available automatically to married different-sex couples.[11]

In short, it cannot be disputed that denial of the freedom to marry inflicts substantial, tangible harms on same-sex couples and their children – and will continue to do so every day until full equality is recognized. Indeed, some plaintiffs have already died waiting for affirmation of their right to marry in their

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[10] Adam Polaski, *A Same-Sex Couple in Kentucky Urges Governor: Don't Appeal Equality*, Freedom to Marry (Mar. 5, 2014), *available at* http://www.freedomtomarry.org/blog/entry/a-same-sex-couple-in-kentucky-urges-governor-dont-appeal-equality.

[11] *Why We're Taking on SD's Marriage Ban*, Freedom to Marry, *available at* http://www.freedomtomarry.org/story/entry/why-were-taking-on-south-dakotas-marriage-ban.

home state.[12] No purpose is served by permitting such harms to continue.

II. Marriage Discrimination Also Inflicts Ongoing Injury to the Dignity and Emotional Well-Being of Millions of Children, Parents, and Other Family Members

Review is necessary to end a further type of ongoing harm previously recognized by this Court – denial of the right to equal dignity under the law when same-sex relationships are singled out for official disrespect and disfavor. This "dignitary" harm is not merely abstract or symbolic. It includes significant psychological and emotional injuries flowing from being treated as a second-class citizen in a second-tier relationship. This harm affects couples whose relationships are disrespected as well as all members of their extended families who love and celebrate their relationships. But the harm is

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[12] *See, e.g.*, Cary Aspinwall, *Couple, together 20 years, runs out of time waiting for Oklahoma marriage law to change*, Tulsa World, *available at* http://m.tulsaworld.com/homepage3/couple-together-years-runs-out-of-time-waiting-for-oklahoma/article_7b1fdb08-c123-552e-aaf9-d7b9e523dcce.html?mode=jqm (couple together almost 20 years misses chance to marry when one partner dies just as Oklahoma's marriage ban is being invalidated); *Security, Comfort & Happiness in OK*, Freedom to Marry, *available at* http://www.freedomtomarry.org/story/entry/security-comfort-happiness-in-ok (couple together more than 20 years and married in Iowa denied VA Home Loan, and one spouse dies, before marriage is recognized in home state of Oklahoma).

particularly severe and irreparable for the children of couples denied the freedom to marry.

As the Court held in *Windsor*, differentiating between different-sex and same-sex relationships "demeans the couple, whose moral and sexual choices the Constitution protects" and "humiliates tens of thousands of children now being raised by same-sex couples." *Windsor*, 133 S. Ct. at 2694. A law denying same-sex couples the rights and benefits afforded different-sex couples "makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Id.* The Court found that "DOMA instructs all federal officials, and indeed all persons with whom same-sex couples interact, including their own children, that their marriage is less worthy than the marriages of others." *Id.* at 2696.

State laws entirely excluding same-sex couples from marriage likewise inflict severe dignitary injury, and federal courts have cited such harms in striking down state marriage bans since *Windsor*. *See, e.g.*, *Bostic v. Schaefer*, 760 F.3d 352, 383 (4th Cir.) ("[B]y preventing same-sex couples from marrying, the Virginia Marriage Laws actually harm the children of same-sex couples by stigmatizing their families and robbing them of the stability, economic security, and togetherness that marriage fosters."), *cert. denied*, 135 S. Ct. 286 (2014); *Kitchen*, 755 F.3d at 1215 (state marriage bans "prohibit the grant or recognition of any rights to [same-sex couples and

their] famil[ies] and discourage [their] children from being recognized as members of a family by their peers"). There are six million Americans with at least one parent who identifies as lesbian, gay, bisexual, or transgender[13] and nearly 650,000 same-sex couples, of which twenty percent are raising children.[14] The psychological and emotional harms these families and their children experience are palpable in the stories many have shared about the ways in which exclusion from civil marriage has affected them. As a young woman with two mothers explained to the Family Equality Council, the state's exclusion of same-sex couples from civil marriage "felt like a slap in the face from my country. I had never asked for validation, but blatant exclusion hurts."[15]

Evidence presented to courts in marriage cases shows how excluding same-sex couples from civil

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[13] Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute (2013), *available at* http://williamsinstitute.law.ucla.edu/research/census-light-demorgraphics-studies/lgbt-parenting-in-the-United States.

[14] *See, e.g.*, Gary J. Gates, *Same Sex and Different Sex Couples in the American Community Survey: 2005-2011*, Williams Institute (Feb. 2013), *available at* http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/ss-and-ds-couples-in-acs-2005-2011/.

[15] Statement from Tsipora Prochovnick to Our Family Coalition (Feb. 5, 2013) (on file with Family Equality Council) (cited in Amicus Curiae Brief of Family Equality Council, *Latta v. Otter*, Case Nos. 14-35420 and 14-35421 at 22-23 (9th Cir. July 25, 2014)), ECF No. 109.

marriage creates anxiety and distress among children of same-sex couples:

- Clint McCormack and Bryan Reamer's son was upset to discover that only one of his fathers was legally his parent: "'When our fifteen-year-old son Keegan realized that both his dads weren't legal[ly] [his parents], he felt like the rug was pulled out from under him. The distress he felt . . . it was like the state was punishing my child and I couldn't do anything about it.'"[16]

- As one youth described to a Nevada Assembly Committee on Legislative Operations and Elections, "'My brother and I deserve to feel safe and secure that [both of our moms] can pick us up from school, take us to the doctor, or make decisions about our well-being, without facing unnecessary obstacles. Just like all my friends' parents.'"[17]

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[16] *300 Families for Marriage Equality*, ACLU of Michigan, *available at* http://www.aclumich.org/300Families; *see also* Complaint at 16-17, *Caspar v. Snyder*, Case No. 2:14-cv-11499-MAG-MKM (E.D. Mich. Apr. 14, 2014), ECF No. 1.

[17] Testimony of 11-year-old before the Nevada Assembly Committee on Legislative Operations and Elections. Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections (May 9, 2013), Hearing on Senate Joint Resolution 13 (1st Reprint), *available at* www.leg.state.nv.us/Session177th2013/Minutes/Assembly/LOE/Final11120.pdf (statement of D. Z. and K. Z.) (cited in Amicus Curiae Brief of Family

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- And as one ten-year-old told the Family Equality Council, "[s]ometimes at school if we're talking about our families, someone will bring up the fact that I have two moms and they aren't allowed to be married. It hurts my feelings and it makes me feel insecure. It makes me feel like I'm not supposed to be there and I don't fit in."[18]

Such dignitary harms cause real hurt every day, augmenting the legal and financial harms outlined in Point I, above, by underscoring that same-sex couples are disdained by the state as second-class citizens. Every day this official disrespect persists is an affront to the Constitution – and needlessly harms the well-being of families and their pursuit of happiness.

III. Even for Couples Able to Marry in Their Home States, the Patchwork of State Laws Recognizing and Denying the Freedom to Marry Inflicts Ongoing Injury Daily

Finally, review is necessary to resolve inconsistency in the law caused by some states' continued denial of the freedom to marry, which causes a host of

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Equality Council, *Sevcik v. Sandoval*, Case Nos. 12-17668, 12-16995, and 12-16998 (9th Cir. Oct. 25, 2013)), ECF No. 59.

[18] Statement from R.K.N. of Utah to Family Equality Council (Jan. 21, 2014) (on file with Family Equality) (cited in Amicus Curiae Brief of Family Equality Council, *Kitchen v. Herbert*, No. 13-4178 at 18 (10th Cir. Mar. 4, 2014)).

burdens and practical injuries, great and small, even for same-sex couples able to marry in their home states. These harms disrupt the lives of couples and their families in a wide range of circumstances.

Windsor spoke to the complications caused by DOMA creating "two contradictory marriage regimes . . . forc[ing] same-sex couples to live as married for the purpose of state law but unmarried for the purpose of federal law, thus diminishing the stability and predictability of basic personal relations" and "plac[ing] same-sex couples in an unstable position of being in a second-tier marriage." 133 S. Ct. at 2694. The current inconsistent regime imposes a similar lack of stability and predictability on married same-sex couples and those with whom they deal.

After *Windsor*, same-sex couples who live and marry in one of the thirty-three U.S. jurisdictions that uphold the right to marry are treated as married for both federal and state purposes – but when they travel to a state that refuses to recognize the lawful marriages of same-sex couples (including the five states covered by the rulings below), they may be treated as unmarried for state law purposes and face the harms discussed above in Point I. For example, although legally married in their home state, they may be unable to divorce if they move to a non-recognition state.[19]

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[19] *See Borman v. Pyles-Borman*, Case No. 2014-CV-36 (Tenn. Cir. Ct. Aug. 5, 2014) (marriage of same-sex couple legally

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Kris and Jason Morley-Nikfar present another such example. Kris and Jason have been in a loving and committed relationship for twelve years and married for ten. Amicus Curiae Brief of Parents, Families and Friends of Lesbians and Gays, Inc. at 9-10, *Bostic v. Harris*, Case. Nos. 14-1167(L) (4th Cir. Apr. 18, 2014), Docket No. 153-1. Like many couples, upon marrying in Massachusetts, they legally changed their last names to "Morley-Nikfar." *Id.* at 10.

After moving to states with marriage bans, Kris and Jason experienced repeated harm from official refusal to recognize their marriage. For example, when they moved to Atlanta and sought Georgia drivers' licenses, DMV officials refused to accept their marriage license as valid proof of their name change, loudly berating them and saying they would have to go to court and obtain a "real" name change if they wanted accurate drivers' licenses. *Id.* at 10-11. Later, upon moving back to Kris's home state of Virginia, they faced legal obstacles to becoming parents when they learned that Virginia permitted adoptions only by single people and those with recognized different-sex marriages. *Id.* at 11-12.

Meanwhile, couples who live in a non-recognition state but travel to another state to marry face a different constellation of complications upon returning home – for example, loss of certain Social Security

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married in Iowa could not be dissolved in Tennessee because marriage was "void and unenforceable" under Tennessee law).

and veterans' benefits that by law are determined based on current domicile[20] and the need to engage in burdensome procedures to file state tax returns as unmarried persons.[21] Such couples also may face denial of the full panoply of state law protections available automatically to their married different-sex neighbors. *See* Point I above.

Post-*Windsor* decisions have identified such complications as another unnecessary harm flowing from marriage discrimination. In *Kitchen*, the Tenth Circuit upheld a district court decision invalidating Utah's ban on both the performance and recognition of marriages of same-sex couples, in part because of interstate complications: "In light of *Windsor*, we agree with the multiple district courts that have held that the fundamental right to marry necessarily includes *the right to remain married.*" 755 F.3d at 1213 (emphasis added).

Not knowing whether one will be treated as married when one moves or travels constitutes both tangible and dignitary injury. The inconsistency from state to state in respecting the freedom to marry forces married couples to anticipate traumatic events,

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[20] *See Implementation of* United States v. Windsor, Memorandum to the President, Office of the Attorney General at 3 (June 20, 2014), *available at* http://www.covellpc.com/download/US-v-Windsor.pdf.

[21] *8 Things Same-Sex Couples Need to Know About Taxes*, Lambda Legal (Feb. 7, 2014), *available at* http://www.lambdalegal.org/blog/20140207_8-things-to-know-about-taxes-2014#2.

such as illness or death, that might occur while traveling and to take additional costly and burdensome legal steps to try to replicate family rights that would travel with them automatically as a different-sex married couple – for example, obtaining a step-parent or second parent adoption or preparing living wills and powers of attorney.[22]

Couples that fail to take such steps may face grievous consequences. A harrowing example is presented in the story of a woman from Washington who collapsed while vacationing with her partner in Miami:

> Although her partner had documentation of her relationship and a power of attorney, she claims hospital officials told her she wasn't a family member under Florida law. The woman spent hours talking with hospital personnel in an effort to visit her partner's bedside. Although she eventually prevailed, her partner's condition had already deteriorated and the woman died. Because of the problem, the children the patient had adopted and been raising with her partner weren't able to see her before she died.[23]

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[22] *See Hawai'i Marriage Law*, Lambda Legal, *available at* http://www.lambdalegal.org/publications/hawaii-marriage-faq.

[23] Tara Parker-Pope, *How Hospitals Treat Same-Sex Couples*, The New York Times (May 12, 2009), *available at* http://well.blogs.nytimes.com/2009/05/12/how-hospitals-treat-same-sex-couples.

The threat of such treatment hangs over every married same-sex couple who travels to a discriminating state – disrupting their marriage not just while traveling, but also at home, by forcing them to confront and guard against hypothetical realities that could befall them, the kind of realities that haunt all parents and spouses. This renders the marriages of same-sex couples unequal even in states that have affirmed the freedom to marry because they remain vulnerable to discrimination that persists elsewhere in the nation.

All of the harms discussed above are unnecessary. Court after court – with the notable exceptions of the courts below in these cases – has recognized such harms and found no rational (much less compelling) state interest in inflicting them. These harms continue every day, complicating and burdening the lives of millions of Americans, and the decisions below have only made matters worse. The time has come for this Court to grant review, resolve the circuit split now presented, and affirm that same-sex couples are entitled to the same freedom to marry as different-sex couples as a matter of equal protection and basic fairness. To leave this question unresolved nationwide would simply inflict continued unnecessary harm.

CONCLUSION

For the reasons stated above, *Amici* respectfully urge the Court to grant *certiorari* in one or more of the pending marriage equality cases.

Respectfully submitted,

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